

31A-27a-514 Recovery of premiums owed.

- (1)
 - (a) An insured shall pay any unpaid earned premium or retrospectively rated premium due the insurer:
 - (i) directly to the receiver; or
 - (ii) to an agent that pays or is obligated to pay the receiver on behalf of the insured.
 - (b)
 - (i) Premium on surety business is considered earned at inception if no policy term can be determined.
 - (ii) All premium other than that described in Subsection (1)(b)(i) is considered earned and is prorated equally over the determined policy term, regardless of any provision in the bond, guaranty, contract, or other agreement.
- (2)
 - (a) A person, other than the insured, responsible for the remittance of a premium, shall turn over to the receiver any unpaid premium due and owing as shown on the records of the insurer for the full policy term due the insurer at the time of the entry of the receivership order:
 - (i) including any amount representing commissions; and
 - (ii) whether earned or unearned based on the termination of coverage under Sections 31A-27a-402 and 31A-27a-403.
 - (b) The unpaid premium due the receiver from any person other than the insured excludes any premium not collected from the insured and not earned based on the termination of coverage under Sections 31A-27a-402 and 31A-27a-403.
- (3)
 - (a) A person, other than the insured, responsible for the remittance of a premium, shall turn over to the receiver any unearned commission of that person based on the termination of coverage under Sections 31A-27a-402 and 31A-27a-403.
 - (b) A credit, setoff, or both may not be allowed to an agent, broker, premium finance company, or any other person for an:
 - (i) amount advanced to the insurer by the person on behalf of, but in the absence of a payment by, the insured; or
 - (ii) other amount paid by the person to any other person after the day on which the order of receivership is entered.
- (4) Regardless of any provision to the contrary in an agency contract or other agreement, a person that collects premium or finances premium under a premium finance contract, that is due the insurer in receivership is considered to:
 - (a) hold that premium in trust as a fiduciary for the benefit of the insurer; and
 - (b) have availed itself of the laws of this state.
- (5)
 - (a) A premium finance company is obligated to pay an amount due the insurer from a premium finance contract, whether the premium is earned or unearned.
 - (b) The receiver may collect an unpaid financed premium directly from:
 - (i) the premium finance company by taking an assignment of the underlying premium finance contract; or
 - (ii) the insured that is a party to the premium finance contract.
- (6) Upon satisfactory evidence of a violation of this section by a person other than an insured, the commissioner may pursue one or more of the following courses of action:
 - (a) suspend, revoke, or refuse to renew the license of an offending party;

- (b) impose a penalty of not more than \$1,000 for each act in violation of this section by a party;
and
 - (c) impose any other sanction or penalty allowed for by law.
- (7)
- (a) Before the commissioner may take an action set forth in Subsection (6), written notice shall be given to the person accused of violating the law:
 - (i) stating specifically the nature of the alleged violation; and
 - (ii) fixing a time and place, at least 10 days after the day on which the notice is sent, when a hearing on the matter is to be held.
 - (b) After a hearing, or upon failure of the accused to appear at a hearing, the commissioner, if a violation is found, shall impose the penalties under Subsection (6) that the commissioner considers advisable.
 - (c) If the commissioner takes action under this Subsection (7), the party aggrieved may appeal from that action as provided in Title 63G, Chapter 4, Administrative Procedures Act.

Amended by Chapter 382, 2008 General Session